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Comments on Section 5005 of the proposed regulations,

“Reduce Reliance on the Delta through Improved Regional Water Self-Reliance”

There are substantial deficiencies in this section of the proposed rules, which were noted by Jared Huffman, Chair of the Assembly Water, Parks, and Wildlife Committee.

Subsection c,d, and e of Section 5005 state:

(c) Water shall not be exported from, transferred through, or used in the Delta if all of the following apply:

(1) One or more water suppliers that would receive water as a result of the export, transfer or use have failed to adequately contribute to reduced reliance on the Delta and improved regional self reliance consistent with all of the requirements listed in paragraph (1) of subsection (e);

(2) That failure has significantly caused the need for the export, transfer or use; and

(3) The export, transfer, or use would have a significant adverse environmental impact in the Delta.

(d) For purposes of Water Code Section 85057.5(a)(3) and Section 5003(a)(5) of this Chapter, this policy covers a proposed action to export water from, transfer water through, or use water in the Delta.

(e)(1) Water suppliers that have done all of the following are contributing to reduced reliance on the Delta and improved regional self-reliance and are therefore consistent with this policy:

(A) Completed a current Urban or Agricultural Water Management Plan which has been reviewed by the Department of Water Resources for compliance with the applicable requirements of Water Code Division 6, Parts 2.55, 2.6, and 2.8;

(B) Identified, evaluated and commenced implementation, consistent with the implementation schedule set forth in the management plan, of all programs and projects that are locally cost effective and technically feasible which reduce reliance on the Delta; and,

(C) Included in the plan, commencing in 2015, the expected outcome for measurable reduction in Delta reliance and improvement in regional self reliance.

Sections(c-e) are not sufficient to ensure that water agencies using water exported from, or transferred through the Delta meet the mandate of the Delta Reform Act to reduce reliance on the Delta:

85021. The policy of the State of California is to reduce reliance on the Delta in meeting California's future water supply needs through a statewide strategy of investing in improved regional supplies, conservation, and water use efficiency. Each region that depends on water from the Delta watershed shall improve its regional self-reliance for water through investment in water use efficiency, water recycling, advanced water technologies, local and regional water supply projects, and improved regional coordination of local

[emphasis added]

With respect to subsection (A) of section (e)(1), the Urban Water Management Plans approved by the Department of Water Resources do not necessarily reduce reliance on Delta exports. They may only reduce per-capita use, or reduce use from an artificial baseline, which may

project usage if current plumbing codes and tiered water rates were not in effect.¹ Agricultural Water Management Plans may not take into account actual water deliveries, but may assume 100% of contracted water deliveries, which has occurred in very few years since 1990.²

Subsection (B) only requires implementation of projects which are “locally cost-effective.” Water conservation, water recycling, and alternative supply projects such as brackish groundwater desalination may not be “locally cost effective” when compared with subsidized water exports from the Delta, but are necessary to reduce reliance on the Delta in accordance with state policy as mandated in SB 7x1. SB 7x1 does NOT state that “it is the policy of the state of California to reduce reliance on the Delta ... to the extent that it is locally cost-effective.”

The requirement to reduce reliance on the Delta is absolute, and should be compared to the mandate to increase California’s portfolio of renewable energy in the state. Just as expanding California’s portfolio of renewable energy reduces reliance on fossil fuels, expanding California’s water supply portfolio reduces reliance on the Delta and helps ensure a reliable water supply in the face of future droughts and reductions in climate change.³

Subsection (C) improperly delegates the role of the Council in setting metrics for reduced reliance on the Delta, and may result in metrics which only measure reduction in per-capita use, or reduction from artificial baselines, which do not meet the mandates of SB7x1.

With respect to section 5005(c-e), Assemblymember Jared Huffman made it clear that the legislative intent was to absolutely reduce reliance on the Delta:

Dear Chair Isenberg and members of the Council:

As the United States Supreme Court has often repeated, you “must presume that a legislature says in a statute what it means and means in a statute what it says there.” Only if it is ambiguous do you need to look farther.

¹ See, for example, Metropolitan Water District’s 2010 Regional Urban Water Management Plan. Available at http://mwdh2o.com/mwdh2o/pages/yourwater/RUWMP/RUWMP_2010.pdf Incorporated by reference.

² See, for example, Westlands Water District’s 2007 Agricultural Water Management Plan. Available at http://www.westlandswater.org/long%5C201002%5Cwmp_2007.pdf Incorporated by reference.

³ See “Incorporating Drought Risk from Climate Change Into California Water Planning”, California Water Research, August 2012. Available at <http://www.scribd.com/doc/102969559/Incorporating-Drought-Risk-Into-California-Water-Planning> Incorporated by reference.

Almost three years ago the Legislature and the Governor acknowledged, in an unambiguous manner, that the Sacramento-San Joaquin Delta Estuary was in crisis and that existing Delta policies were not sustainable. In adopting the Delta Reform Act of 2009, the law unequivocally stated that the “policy of the State of California is to reduce reliance on the Delta in meeting California’s future water supply needs through a statewide strategy of investing in improved regional supplies, conservation, and water use efficiency.”

As one of the legislators who helped write that Act, and who specifically insisted on the inclusion of the “reduce reliance” provision, let me be clear: the Act means what it says. Reduce means reduce — it means use less Delta water. Equally plain, it does not and cannot mean use more Delta water, even if technical justifications are offered based on per capita water use or other complex rationales.

There are those who seek to creatively reinterpret the word “future” to mean that all present reliance was somehow grandfathered in and that the goal of lessening our pressure on an oversubscribed Delta Estuary was somehow limited to some as-yet-unknown additional pressure.

These are inaccurate, self-serving interpretations of the Act by interests who knew full well in 2009 what the letter and spirit of the Act required. Having declared in 2009 that the level of reliance on the Delta was “unsustainable,” it would make no sense to enshrine that unsustainable reliance as a means of fixing the Delta.

Let’s be clear: in 2009 the year 2012 was the future. It is now the present. And it is past time to reduce our reliance on unsustainable Delta diversions.

It bears noting that had the legislature intended to grandfather-in existing levels of diversions, to apply the “reduce reliance” policy only to future additional demands, to apply it only to per capita water use, or to maintain existing contractual or “average” levels of Delta exports, the Act would have said so. It does not say any of those things and even the most tortured post-hoc interpretation cannot credibly bend the words of the Act to mean these things.

Finally, for those within the Delta watershed who seek to over-complicate the Act by arguing they are incapable of a reduction in reliance because they cannot “improve their regional self-reliance,” that is an equally tortured interpretation. The statute does not say they must eliminate reliance on the Delta. Instead, it calls for water use efficiency, water recycling,

advanced water technologies, local and regional water supply projects, and improved regional coordination of local and regional water supply efforts. There are many approaches in that portfolio that would lead to a reduction in the use of Delta water and hence reduced reliance on Delta diversions.

In closing, I urge the Council not to weaken Water Reliability Policy 1 in the Delta Plan but to instead hold all parties accountable for reducing their reliance on the Delta. To do otherwise will fundamentally undermine your own ability to achieve the coequal goals. It is only by reaching a more realistic expectation of what the Delta can sustainably provide, and moving aggressively to implement technologies that will enhance other water supply sources, that Californian's will enjoy a more reliable water supply and improved ecosystem health in the Delta.

Sincerely,

Jared Huffman, Chair

Assembly Committee on Water, Parks & Wildlife⁴

Section 5005 must be revised to ensure that it is in conformance with state policy as expressed in SB7x1.

Sincerely,

Deirdre Des Jardins

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⁴ Letter read by Tina Cannon Leahy, Principal Consultant for the Assembly Water, Parks & Wildlife Committee, into the record at the Delta Stewardship Council meeting, June 2012.